DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Food and Drug Administration
College Park, MD 20740

SEP 18 2007 OCT -2 P12 :42

Leonard Tabachnik
Medicine Chest, Inc.
P.O. Box 14, Knickerbocker Station
New York, New York 10002

Dear Dr. Tabachnik:

This is in response to your submission to the Food and Drug Administration (FDA) received on September 6, 2007. In our September 22, 2006 letter to you, FDA advised you that if your submission was intended to be the submission required under 21 U.S.C. § 343(r)(6) (section 403(r)(6) of the Federal Food, Drug, and Cosmetic Act (the Act)) and Title 21 of the Code of Federal Regulations (21 CFR) Part 101.93(a) it did not meet the requirements for that submission. Accordingly, a failure to submit a notice in compliance with those requirement MAY (emphasis added) subject the product that is the subject of the notification to regulation under the drug provisions of the Act. It is still not clear whether you intend this document to constitute the aforementioned submission.

Dietary supplements are regulated under the provisions of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. § 321 et. seq.), as amended by the Dietary Supplement Health and Education Act of 1994. Regulations implementing certain requirements of the Act are published in Title 21 of the Code of Federal Regulations (21 CFR). Generally, there is no requirement for premarket review or approval of dietary supplements. It is the manufacturer's responsibility to ensure that its products are in compliance with applicable requirements of the Act and regulations promulgated under the Act. FDA does not approve dietary supplements or their ingredients. Accordingly, your belief that the Agency "has prevented Medicine Chest, Inc. from marketing its first product" is simply unfounded. FDA's letter served only to advise you of your apparent failure to fully comply with the notification requirement in 21 CFR 101.93(a).

A product may be subject to regulation not as a food or dietary supplement, but as a drug if certain claims are made for it. Under the Act, an article that is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man is a drug. Further, under the Act, an article that is other than food and that is intended to affect the structure or any function of the body of man, is also a drug. See 21 U.S.C. § 321(g)(1). A drug must be shown to be safe and effective for its intended use and must be approved by FDA before it may be lawfully marketed.

Under 21 U.S.C. § 343(r)(6) the labeling of dietary supplements may, under certain circumstances, bear statements that: 1) claim a benefit related to a classical nutrient deficiency disease and disclose the prevalence of such disease in the United States; 2) describe the role of a nutrient or dietary ingredient intended to affect the structure or function in humans; 3) characterize the documented mechanism by which a nutrient or dietary

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ingredient acts to maintain such structure or function; or 4) describe general well-being from consumption of a nutrient or dietary ingredient. Section 343(r)(6) also provides that a statement included in labeling under the authority of that section may not claim to diagnose, mitigate, treat, cure, or prevent a specific disease or class of diseases. Claims made pursuant to section 343(r)(6) do not require prior approval from FDA. Other information on structure/function claims can be found at http://www.cfsan.fda.gov/~dms/sclmguid.html and http://www.cfsan.fda.gov/~dms/dsclmgui.html.

In your letter, you present a number of legal reasons that you believe the claims you intend to make are permissible under the Act. Some are not material because they are related to products such as topical drugs and medical devices that are subject to completely different statutory requirements than are dietary supplements. Others are based on incorrect interpretations of the legal authorities that govern FDA's determinations on whether a claim is or is not a disease claim as that term is defined in 21 CFR 101.93(g). In general, the legal and Constitutional issues you raise were addressed in detail by FDA in the preamble to the final rule on structure/function claims that was published in the January 6, 2000 Federal Register (65 FR 1000 at 1033). You should refer to that document for more information on this matter.

It appears that you intend to make claims that your product is intended to act to alleviate leg cramps. You further state that such claims are claims under 21 U.S.C. § 343(r)(6) because they claim a benefit related to a classical nutrient deficiency disease and disclose the prevalence of such disease in the United States. The information in your letter is not sufficient for us to comment on whether that is the case or not. However, we would note that some cases of leg cramps that you cite, for example those that are a consequence of diabetes, would not be such a claim but rather appear to be disease claims as that term is defined in 21 CFR 101.93(g) in that this category of leg cramps is a consequence of a disease that is itself a disease. We would recommend that before you proceed, you may find it helpful to consult an attorney with experience in this area of food and drug law.

Please contact us if we may be of further assistance.

Sincerely yours,

Vasilios Frankos

Vasilios H. Frankos, Ph.D.
Director
Division of Dietary Supplement Programs
Office of Nutrition, Labeling
and Dietary Supplements
Center for Food Safety
and Applied Nutrition

Copies:
FDA, Center for Drug Evaluation and Research, Office of Compliance, HFD-310
FDA, Office of the Associate Commissioner for Regulatory Affairs, Office of Enforcement, HFC-200
FDA, New York District Office, Office of Compliance, HFR-NE140

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MEDICINE CHEST INC.
P.O. Box 14, Knickerbocker Station
New York, New York 10002
Phone: (212) 591-0862

An Appeal to the FDA for the use of a label on a Dietary Supplement

The FDA has prevented Medicine Chest, Inc. from marketing its first product on the ground that the product contains a label which it defines as a medical claim.

Medicine Chest, Inc. has maintained that the label on the product was for the purpose of guidance in aiding the consumer who is often overwhelmed with dietary supplements and whose purpose the consumer is often unable to decipher. This it was thought would fulfill the educational purposes of Dshea legislation. According to the law, a guidance claim which is not a health claim must be filed within thirty days after marketing.

While the president of the company spoke with several individuals at the FDA prior to manufacturing, no individual would commit himself in providing advice. Only after the product was manufactured , at some expense, and submitted to the FDA within the first thirty days of marketing did the company receive a negative reply prohibiting him from marketing the product.

There are two major defenses to this appeal: First, that while the law may be irrational and unconstitutional when it maintains that a label with medical connotations transmutes a simple dietary supplement into a drug, the police action of the FDA, this petitioner for the defense relies on 21SS321(g) line 10-14 which

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states that the FDA cannot reject a dietary supplement solely because of the label. Since the product is already on the market and is manufactured by the same contract manufacturer, it appears that only the labeling is contested and the FDA's objection cannot stand according to 21SS321(g).

The second defense is to define leg cramps as deficiency syndrome and disease under 21SS101.93. Under this classification and definition the labeling on the product maintains an exemption from anything that may be interpreted as a disease claim.

Defense I 21SS321 Definitions; generally

1. (g line 10) "A food or dietary supplement for which a claim, subject to sections 343 (R)(1)(B) and 343 (R) of this title, is made in accordance with the requirements of section 343 (R) of this title is not a drug solely because the label or labeling contains such a claim . . ."

According to this law the FDA's rejection of Medicine Chest 's product which is solely based on its label is illegal.

2. Medicine Chest, Inc. states once again that the product is already on the market as a dietary supplement without the labeling, and, as such it does not need further testing.

3. 21SS343(S). The last paragraph states: "A dietary supplement shall not be deemed misbranded solely because its labeling contains directions or conditions of use or warnings."

4. 21US343-2(C). the burden of proof is on the US government or FDA to demonstrate that there is anything misleading about the product. Either the product accomplishes what the label's direction states or it does not. The label is a truthful representation of research results and its purpose is to fulfill the educational goals of the legislation. Unlike numerous products on the market there are no outlandish claims here.

5. A July 3, 2007 article in The Wall Street Journal by Laura Johannes has noted that there are several products on the market earmarked for various forms of blood clotting but which have not undergone animal or clinical testing. As the reviewer noted, "there are few, if any, published scientific studies on the consumer products, but some doctors give them high marks." See also WSJ, May 11, 2007. It is obvious from this news story that the FDA is aware of what appears to be a rather large category of untested drugs which it tolerates.

6. Medicine Chest's product is a dietary supplement and not a drug. In its guide, "Overview of Dietary Supplements," the US Food and Drug Administration Center for Food Safety and Applied Nutrition issued on January 3, 2001 defined dietary supplements as everyone seems to under stand the matter, and concluded: "Whatever their form may be, DSHEA places dietary supplements in a special category under the general umbrella of "foods," not drugs, . . ." Yet, even after stating that dietary supplements are classified with foods, the guideline notes that any claim on the label to health relief transmutes this innocent food into an illegal drug.

7. By following this procedure a very simple bandage on the market called "Good Wraps" is a drug because the company states that the product can be used for "Leg Cramps, Muscle Cramps, Food Cramps, Leg Cramp, Leg Pain Treatment" (See enclosed advertisement).

8. There are also a host of products on the market which may be OTC and which make medical claims, but which do not have an NDC number and which have probably not undergone testing. Nature's Choice makes a medical claim.

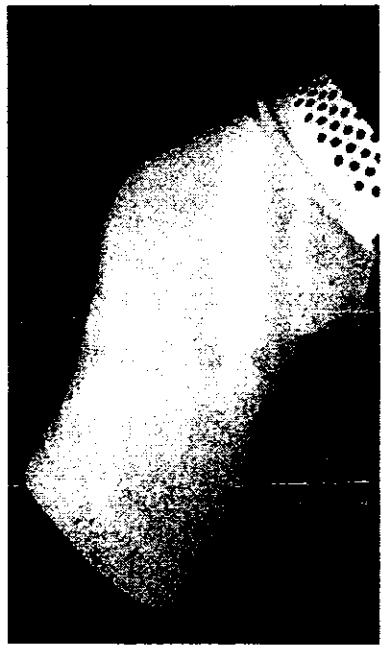
In some instances such as the case with anti-fungal creams the claim that the product "cures Athlete's Foot" is totally fraudulent; and it is possible to use these expensive substances over the course of a lifetime without a cure. These products as well as junk prescriptions truly bring into question the custodial nature of the FDA and it surely is the most concentrated power institution in all of American history, far more powerful than the Standard Oil Company before it was broken up as a trust.

9. Medicine Chest, Inc. is also aware that the FDA may currently be under the influence of critics of dietary supplements and are therefore unduly irrational and hostile to this application. In a 2006 review of the literature entitled Multivitamin/Mineral Supplements and Prevention of Chronic Disease, the author, Dr. Han Yao Huang of Johns Hopkins University maintained that except for a few isolated diseases there does not appear to be strong evidence that supplements prolong life, at least in cases of chronic diseases. The fact, however, is evident that Huang's selection is rather biased in what it included and excluded, thereby creating a serious statistical distortion.

At the same time it must be pointed out that many symptoms associated with one disease often appear in a variety of forms in another named disease either to a lesser or greater extent. For example, dysentery is a milder form of Cholera, but it is possible to diagnose many of the symptoms in dysentery that are often found in cholera. A recent article in Postgraduate Medicine, "Cutaneous Manifestations of Diabetes," Vol. 119 No. 3, p. 38 by Lt. C.A. Tabor and LCDR E.C. Parlette, is essentially proof for those of us who have argued for a greater

Leg Cramps Treatment Relief Muscle Cramps Treatment Relief Leg Foot Pain

Goode Wraps Pain Management



Leg Cramps, Muscle Cramps, Foot Cramp, Leg Cramp, Calf Cramp

Leg Pain Treatment

Leg, Muscle and Foot Cramps are reduced by relaxing muscles

leg cramps and treatment of the muscle cramps related to leg cramps and leg pain or major foot cramp from muscle cramps or,spasms swelling hurt

Hi,

"I bought one of the leg warmers for a recurring leg muscle cramps in my right calf. I haven't had any leg cramps since using it (knock on wood ! ".
Thanks for the help. Marge G

neuropathy pain and leg cramps with leg pain and ,foot cramp or ,muscles cramps together a spasms and ,pain to swelling with hurt and stiffness, stress

Hockey leg Cramps Soccer Muscle Cramps Basketball Foot Cramps Baseball Calf Cramps
Volleyball Spasms Softball Football Gymnastics Golf Swimming Jogging Cycling Running Skiing Tennis

Leg cramps are very common during the second and third trimester among pregnant women. Fortunately, Goode Wraps provide a way of both preventing and alleviating leg


Nature's Choice®
VAPORIZING
COLDS RUB
NASAL DECONGESTANT
COUGH SUPPRESSANT
Made in U.S.A.
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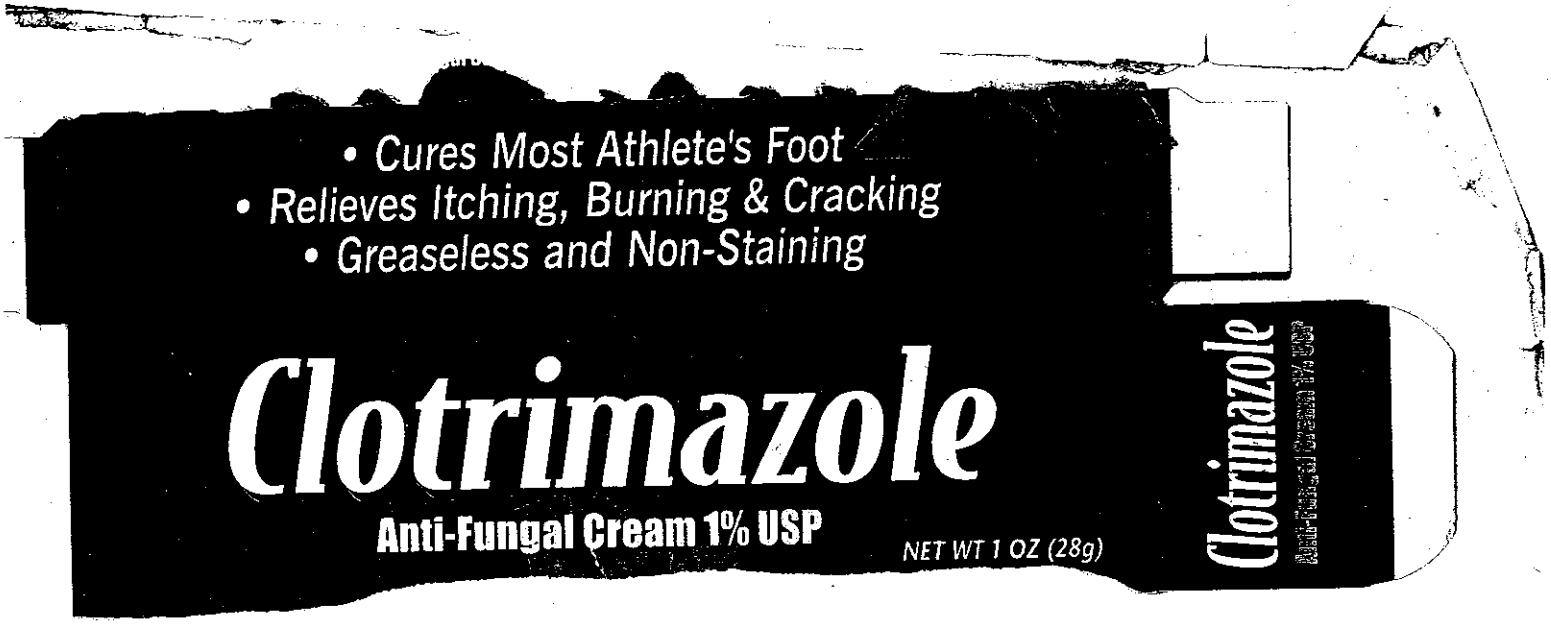
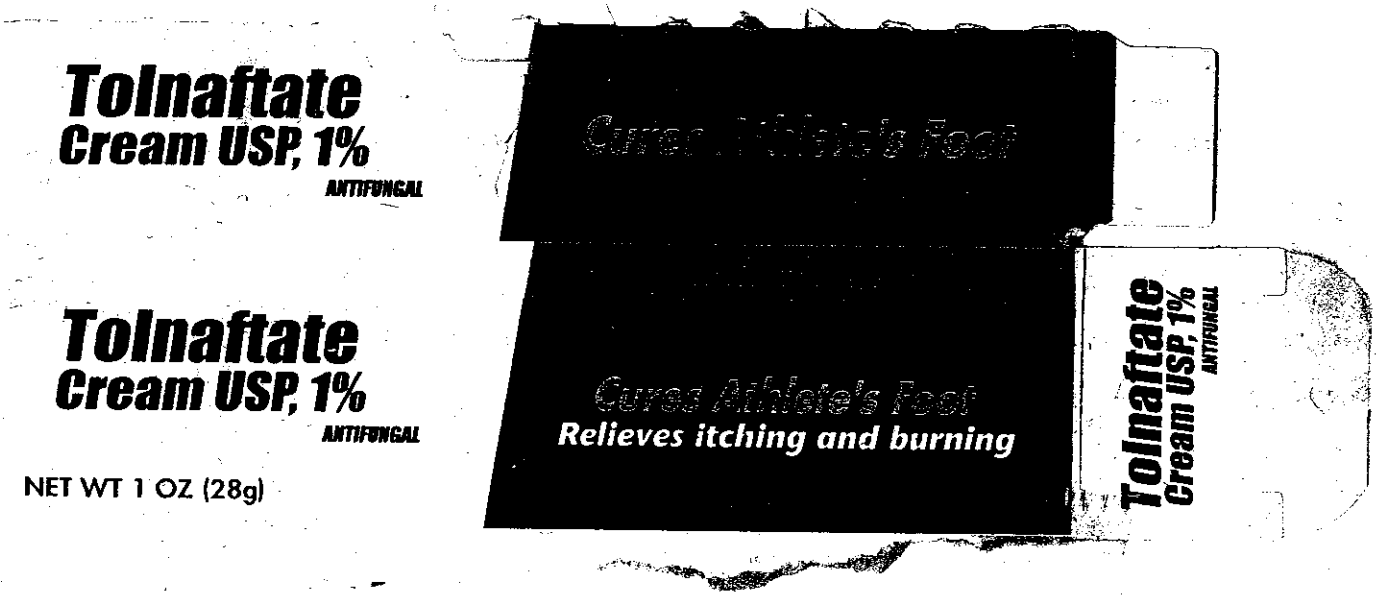

• Cures Most Athlete's Foot
• Relieves Itching, Burning & Cracking
• Greaseless and Non-Staining
Clotrimazole
Anti-Fungal Cream 1% USP
NET WT 1 OZ (28g)
Clotrimazole


Tolnaftate
Cream USP, 1%
ANTIFUNGAL
Tolnaftate
Cream USP, 1%
ANTIFUNGAL
NET WT 1 OZ (28g)
Cures Athlete's Foot
Relieves itching and burning
Tolnaftate
Cream USP, 1%
ANTIFUNGAL

availability of antibiotics. There is no doubt for anyone familiar with diabetes and skin problems that FDA policy is responsible for too many deaths. See the observation by Dr. Sidney D. Wilgus for the Illinois Pellagra Commission.

The fact remains that many symptoms one finds in pellagra, Beri Beri and in Kwashiorkor's disease are widespread among the elderly, particularly those with diabetes, and while the Western countries do not admit to malnutrition among the elderly, the symptoms are strikingly similar.

R. Thornell Mauer in a resourceful article on the "Etiology and Treatment of Leg Cramps," appearing in Postgraduate Medicine, Vol. 30, July 1961, p. 47-50 notes the following: "One of the signs of incipient diabetes mellitus often is cramps in the calves of the legs, which are caused by peripheral neuritis. This is known as Unschild's sign."

A recent article in the British Journal, Clinical and Experimental Dermatology, July 2005, Vol. 30, Issue 4, pp. 388-390, p. 3 with the title "Nutritional deficiencies and the skin," noted that malnutrition states are uncommon in England but recent cases of patients with anorexia nervosa have shown features of pellagra. Certainly if one viewed the variety of symptoms appearing among the medical conditions of elderly patients in western countries, especially diabetes, is impossible not to notice that much of the condition is similar in its clinical appearances to what is known as Pellagra, Kaki, and Kwashiorkor disease and since there is a high correlation between individuals with this condition and leg cramps it is submitted that this be placed with the exempted conditions.

An article in the British Lancet (pg. 25, 29 April 1961) made similar remarks about a medical condition known as Kuru in Jamaica. The disease is degenerative of the nervous system and gives rise to emotional disturbances, tremor, ataxia; all Parkinsonian symptoms with eventual paralysis and death. In his concluding remark, the author notes: "Though not all patients with this condition appear to be undernourished, it is probably a deficiency disease whose nature is not yet completely clear."

A similar conclusion indicating the importance of nutrition in the disease syndrome is his citations from many of his predecessors in the field.

Illinois. Pellagra Commission
Report of the Pellagra Commission of the state of Illinois, November, 1911 (Springfield, Ill. 1912)

V.

CENTRAL NEURITIS AND PELLAGRA.

(By Sidney D. Wilgus.)

In an article in "Brain," 1901, Prof. Adolph Meyer described certain changes in the Betz cells of the motor cortex in a group of eight (8) patients dying from exhaustion. These changes consisted in haziness of the protoplasm, displacement of the Nissl bodies and axonal degeneration. To this condition Dr. Meyer gave the name "Central Neuritis." In addition to these changes in the central nervous system, the clinical symptoms were described in Dr. Meyer's summary as follows:

The disease usually appeared in emaciated people after an exhausting decline. Diarrhœa was a frequent accompaniment of the condition. Most of the cases appeared near the age of the climacteric in conditions suggesting toxic states. The duration of this terminal condition was given as from two to four weeks. As a rule, the knee jerks were exaggerated and occasionally ankle clonus was present. Peculiar tremors and twitchings of the hands, and contractions of the forearms and hands, and some jerking of the muscles were described in different cases. Delirium or delirious agitation and stupor were mentioned as being present commonly. The statement is made specifically that no polyneuritis was found. At times there were febrile fluctuations. This article goes on to say that the central changes mentioned above were found in eight out of two hundred autopsies where the alterations in the Betz cells were looked for.

Dr. Meyer was quite interested in this condition and mentioned it later in the course of his lectures at Manhattan State Hospital. In 1908 a further series of nine cases was described by Dr. Somers, then of the St. Lawrence State Hospital. It would seem that these cases are fairly common, although the subject has received less extensive attention than one would expect from the pronounced pathological and clinical symptoms. Some time ago it was my fortune to see some of these cases in New York State where the clinical symptoms, as noted above, were quite apparent. No cases of pellagra had then been noted in New York State and it cannot be said that symptoms of this disease were closely looked for, either by myself or other investigators.

But last year, with the striking clinical symptoms of central neuritis in mind, I was much interested in noticing exactly the same group of symptoms appear in cases of pellagra in their terminal stages. Searching the literature, it can readily be seen in articles on pellagra, such as those written by Tanzi and Bianchi and Babcock, and numerous others, that the profound cachectic state described by Meyer is frequently seen in pellagra, with the stupor and delirium, the prostration and diarrhœa and subsultus tendinum, all appearing at about the age mentioned by Meyer, namely, at the climacteric. Some of these cases within my knowledge have shown opisthotonos, jactations, etc., so well described by Meyer and Somers in their articles, and which I observed myself in cases of central neuritis. In addition to these symptoms of central neuritis, there were the undisputed symp-

toms of pellagra, such as, the gradual physical failure with diarrhœa; the bilateral symmetrical skin lesions involving usually the hands, the stomatitis; and the mental hebetude found in this disease. In my observations on more than a dozen terminal cases of pellagra these symptoms were present in the preponderance of cases.

After having seen the symptoms described under the heading of "Central Neuritis," and then witnessing the symptoms noted as occurring in the terminal stages of pellagra, it was not difficult to conclude that these terminal symptoms in pellagra were identical with those of Meyer's "Central Neuritis." In other words, pellagra has central neuritis as a terminal condition, as a rule. Of course, I am speaking here of the clinical side alone, and the pathological side is presented by the able pen of Dr. Singer.

Meyer believed this condition to be based on some toxic state, and suggested that alcoholism was frequently the basis on which central neuritis developed. After seeing cases of pellagra one can readily agree with him in his general conclusion that central neuritis is due to toxemia, but in all probability it is of a much wider origin than suspected by Meyer. Meyer had no knowledge of pellagra in Massachusetts or New York at the time he wrote, but most or all of his cases were from those states.

Pellagra is a disease recognized as endemic in the south and middle west. Those who have seen much of this disease know that many of the cases are difficult to diagnose because some of the most important symptoms may be mild or, indeed, not present at all much of the time. Where one case can be diagnosed readily by one unfamiliar with the disease, many masked cases will be passed over entirely. Plainly marked cases have been found in the New York State Hospitals and also in Massachusetts, and from this one may well suspect that the disease is as common there as in other states where it is recognized in its mild forms as well as in the fulminating type.

Perhaps it is going too far to say that pellagra is the sole cause of central neuritis, but it is safe to contend that pellagra is a more frequent cause of this syndrome than has been recognized previous to this time. One may suspect that perhaps some at least of Meyer's and Somers' cases were in pellagrins.

The various monographs on hard and soft water have convinced most scientific bodies that the inclusion of magnesium and calcium can lower the epidemiological rate of heart attacks in a country in what is known as hard water. The first studies were presumably conducted in Japan in 1957 by Kobayashi whose observations have since been confirmed by numerous investigators that deaths from heart disease are greater in soft water areas and lower in hard water areas. Denham Harman, "Hard and Soft Water and the Incidence of Sudden Death from Ischemic Heart Disease: Consideration of Copper, Magnesium and Calcium" in Mildred Seelig, Nutritional Imbalances in Infant and Adult Disease (Spectrum, NY 1977), Chapter I. That same year as the Denham article appeared, the National Research Council (US) Committee on Safe Drinking Water with the title "Drinking water and health" (Washington, D.C. National Academy of Sciences, 1977), Vol. 3, p. 22, concluded "1. In general, when studies encompass large geographical areas, hard water is correlated with low cardiovascular disease rates..."

This most recent methodology has apparently had an impact on the FDA to the extent that in 1996 legislation was passed for the inclusion of folic acid in the food supply for the purpose of preventing birth defects.

Dr. Mildred Seelig, in addition to her own extensive research, has compiled numerous studies which tend to demonstrate the effectiveness of minerals. Her major insight, derived from years of research and experimentation, is that many pathological lesions are in reality deficiencies of minerals which heal rather rapidly once the proper mineral deficiency is supplied. While many of the cases cited by Dr. Seelig are far more serious than what was contemplated by Medicine Chest's tablet, requiring a larger dosage of a mineral, in cases of convulsions, the principle is the same, proving that minerals such as magnesium, calcium, and zinc have a tendency to relieve cramps and spasms (Seelig, p. 119).

Some time in the year 1912 when the /Southern section of the United States was struck by a mysterious epidemic, the state of Georgia completed its published report about pellagra and its symptoms. As the report noted, the first symptom which served as an indicator for the eruption of pellagra was the appearance of erythema on the back part of the hands with edema and a general discoloration. Eventually stiffness of the legs set in resulting in a loss of balance as well as paralysis. The disease struck the elderly as well as youngsters in a highly re cognizable pattern and was classified as an epidemic on account of its high mortality rate. (Georgia State Board of Health, Bulletin, Vol. 2, 1912.

George McCallum Niles, Pellagra, An American Problem (Phila. WB Saunders 2nd ed. 1916) p. 98

This case shows a marked and extensive dermatitis over back and front of neck, face, forearms, hands, legs, and feet. Was transfused from sister, who had never had pellagra. Marked improvement for eight days. Died suddenly at night from perforation of intestinal ulcer. (Courtesy of Dr. H. P. Cole, Mobile, Ala.)

While investigators such as Goldberger (Elizabeth W. Etheridge, The Butterfly Case: A Social History of Pellagra in the South (Greenwood Press, Westport, Conn., 1972) have maintained that the disease was caused by a deficiency of a protein in the diet, a treatment which actually lowered the mortality rate, pathological experiments conducted at an earlier date during the 1880's on beriberi had noted that the destruction of the nervous system may have been the result of an infection or pathogen. (J.F. Siler, MD, P.ER. Garrison, MD and W.J. McNeal, Ph.D., MD. Pellagra: First Progress Report of the Thompson-McFadden Pellagra Commission of the New York Postgraduate Medical School and Hospital (NY 1913), p. 11 also states that it had found the maize theory as "wholly inadequate."

However, Medicine Chest Inc. contends that many of the symptoms which appear in diabetes are very similar to those in pellagra, and the increase of the incidence of diabetes since 1900 only indicates that pellagra exists in another form and under another disease name where it is taking a devastating toll.

The presentation of published research results on the subject is not meant for the purpose of establishing a medical claim, but rather to demonstrate that leg cramps is a symptom of one of the exempted chronic diseases. The uptake of the minerals in the dietary supplement lends proof to the deficiency theory regarding leg cramps. Medicine Chest's main objective is to find a cure for diabetes and the various symptoms associated with diabetic legs and it was while experimenting with these materials in the interim period when it became evident that these minerals relieved leg cramps.

Conclusion

It is very difficult to convince an awesome institution like the FDA that its policies are responsible for a great deal of hardship, suffering, and death when experience has shown that there is a tendency for those who are legally endowed with monopolistic powers to exhibit those powers to the detriment of others. While the medical profession has always had an aura of benevolence attached to it and has historically been viewed as one of the liberal professions, there is no guarantee that an individual's reliance on a physician for survival is superior to a system of self-reliance where he can help himself to whatever medications may be available without prescription.

There is little doubt that the general public prefers system of medicine where they can visit a physician for having their ailments treated. The problem that has arisen in the course of the past generation is that the number of Americans with advanced degrees has increased to a level where they have become critical of the treatments rendered to them in the name of science and they are not entirely satisfied with accepting their fate. To be told by a physician or a hospital staff that your medical condition is not curable represents one of the most disappointing moments in a person's life, especially where the patient instinctually maintains that either the medical profession is holding out and has decided not to treat him, or, that the profession is not as advanced as its public image suggests. In either case, there are numerous individuals walking the streets of this country as invalids but whose condition to a trained eye can be greatly improved and cured.

When the report was originally filed justifying the use of the labeling on the product it was assumed that the guidance provided by the company was in accordance with the letter and spirit of the law. The 1994 law Dshea provides for the government to diffuse as much educational knowledge in regard to the use and benefits of dietary supplements that it would be difficult to see how the FDA can erect barriers which prohibit the communication of research results from a product's label. Yet, the FDA's laws state that any diagnostic sounding name on the label makes the product into a drug which is illegal for a dietary supplement.

As this company has stated in a petition to Congress, unless the ingredients of a product contain drugs, it would be unconstitutional for a law to declare that a diagnostic sounding statement transmutes what is defined as a non-drug into a drug. The sole purpose of this legislation, it would appear, is in its obvious nature to eliminate competition rather than for the purpose of protecting the health of the country.

Nevertheless, Title 21SS321(g) lines 10-14 prohibits the FDA from rejecting a dietary supplement solely on the basis of it s labeling and as such the FDA'a rejection of Medicine Chest's product is illegal.

Addressed to:

Vasilios H. Frankos, Ph.D.
Division of Dietary Supplement Programs
Office of Nutritional Products, Labeling and Dietary Supplements
Center for Food Safety and Applied Nutrition

Subscribed and sworn before me this
28 day of August, 2007

JOHN H. HEUSTON
Notary Public, State of New York
No. 31-01HE6096675 • Qualified in New York County
Commission Expires: 08/04/2011

Medicine Chest Inc.
Leonard Tabachnik (M.D.) President